

alter in any way the priority of National Transportation Safety Board investigations under 49 U.S.C. 1131 and 1134, nor the authority of the Secretary of Transportation to investigate railroad accidents under 49 U.S.C. 5121, 5122, 20107, 20111, 20112, 20505, 20702, 20703, and 20902.

(g) *Disabling event recorders.* Except as provided in paragraph (c) of this section, any individual who willfully disables an event recorder is subject to civil penalty and to disqualification from performing safety-sensitive functions on a railroad as provided in § 218.55 of this chapter, and any individual who tampers with or alters the data recorded by such a device is subject to a civil penalty as provided in appendix B of part 218 of this chapter and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures in part 209 of this chapter.

§ 229.137 Sanitation, general requirements.

(a) *Sanitation compartment.* Except as provided in paragraph (b) of this section, all lead locomotives in use shall be equipped with a sanitation compartment. Each sanitation compartment shall be:

- (1) Adequately ventilated;
- (2) Equipped with a door that:
 - (i) Closes, and
 - (ii) Possesses a modesty lock by [18 months after publication of the final rule];
- (3) Equipped with a toilet facility, as defined in this part;
- (4) Equipped with a washing system, as defined in this part, unless the railroad otherwise provides the washing system to employees upon reporting for duty or occupying the cab for duty, or where the locomotive is equipped with a stationary sink that is located outside of the sanitation compartment;
- (5) Equipped with toilet paper in sufficient quantity to meet employee needs, unless the railroad otherwise provides toilet paper to employees upon reporting for duty or occupying the cab for duty; and
- (6) Equipped with a trash receptacle, unless the railroad otherwise provides portable trash receptacles to employ-

ees upon reporting for duty or occupying the cab for duty.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to:

(i) Locomotives engaged in commuter service or other short-haul passenger service and commuter work trains on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive or elsewhere on the train, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(ii) Locomotives engaged in switching service on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iii) Locomotives engaged in transfer service on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iv) Locomotives of Class III railroads engaged in operations other than switching service or transfer service, that are not equipped with a sanitation compartment as of June 3, 2002. Where an unequipped locomotive of a Class III railroad is engaged in operations other than switching or transfer service, employees shall have ready access to railroad-provided sanitation facilities outside of the locomotive that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift, or the railroad shall arrange for enroute access to such facilities;

(v) Locomotives of tourist, scenic, historic, or excursion railroad operations, which are otherwise covered by this part because they are not propelled by steam power and operate on the general railroad system of transportation, but on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift; and

(vi) Except as provided in §229.14 of this part, DMU, MU, and control cab locomotives designed for passenger occupancy and used in intercity push-pull service that are not equipped with sanitation facilities, where employees have ready access to railroad-provided sanitation in other passenger cars on the train at frequent intervals during the course of their work shift.

(2) Paragraph (a)(3) of this section shall not apply to:

(i) Locomotives of a Class I railroad which, prior to [the effective date of this section], were equipped with a toilet facility in which human waste falls via gravity to a holding tank where it is stored and periodically emptied, which does not conform to the definition of toilet facility set forth in this section. For these locomotives, the requirements of this section pertaining to the type of toilet facilities required shall be effective as these toilets become defective or are replaced with conforming units, whichever occurs first. All other requirements set forth in this section shall apply to these locomotives as of June 3, 2002; and

(ii) With respect to the locomotives of a Class I railroad which, prior to June 3, 2002, were equipped with a sanitation system other than the units addressed by paragraph (b)(2)(i) of this section, that contains and removes human waste by a method that does not conform with the definition of toilet facility as set forth in this section, the requirements of this section pertaining to the type of toilet facilities shall apply on locomotives in use on July 1, 2003. However, the Class I railroad subject to this exception shall not deliver locomotives with such sanitation systems to other railroads for use, in the lead position, during the time between June 3, 2002, and July 1, 2003. All other requirements set forth in this section shall apply to the locomotives of this Class I railroad as of June 3, 2002.

(c) *Defective, unsanitary toilet facility; prohibition in lead position.* Except as provided in paragraphs (c)(1) through (5) of this section, if the railroad determines during the daily inspection required by §229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad shall not use

the locomotive in the lead position. The railroad may continue to use a lead locomotive with a toilet facility that is defective or unsanitary as of the daily inspection only where all of the following conditions are met:

(1) The unsanitary or defective condition is discovered at a location where there are no other suitable locomotives available for use, ie., where it is not possible to switch another locomotive into the lead position, or the location is not equipped to clean the sanitation compartment if unsanitary or repair the toilet facility if defective;

(2) The locomotive, while noncompliant, did not pass through a location where it could have been cleaned if unsanitary, repaired if defective, or switched with another compliant locomotive, since its last daily inspection required by this part;

(3) Upon reasonable request of a locomotive crewmember operating a locomotive with a defective or unsanitary toilet facility, the railroad arranges for access to a toilet facility outside the locomotive that meets otherwise applicable sanitation standards;

(4) If the sanitation compartment is unsanitary, the sanitation compartment door shall be closed and adequate ventilation shall be provided in the cab so that it is habitable; and

(5) The locomotive shall not continue in service in the lead position beyond a location where the defective or unsanitary condition can be corrected or replaced with another compliant locomotive, or the next daily inspection required by this part, whichever occurs first.

(d) *Defective, unsanitary toilet facility; use in trailing position.* If the railroad determines during the daily inspection required by §229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad may use the locomotive in trailing position. If the railroad places the locomotive in trailing position, they shall not haul employees in the unit unless the sanitation compartment is made sanitary prior to occupancy. If the toilet facility is defective and the unit becomes occupied, the railroad shall clearly mark the defective toilet facility as unavailable for use.

(e) *Defective, sanitary toilet facility; use in switching, transfer service.* If the railroad determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective, but sanitary, the railroad may use the locomotive in switching service, as set forth in paragraph (b)(1)(ii) of this section, or in transfer service, as set forth in paragraph (b)(1)(iii) of this section for a period not to exceed 10 days. In this instance, the railroad shall clearly mark the defective toilet facility as unavailable for use. After expiration of the 10-day period, the locomotive shall be repaired or used in the trailing position.

(f) *Lack of toilet paper, washing system, trash receptacle.* If the railroad determines during the daily inspection required by § 229.21 that the lead locomotive is not equipped with toilet paper in sufficient quantity to meet employee needs, or a washing system as required by paragraph (a)(4) of this section, or a trash receptacle as required by paragraph (a)(6) of this section, the locomotive shall be equipped with these items prior to departure.

(g) *Inadequate ventilation.* If the railroad determines during the daily inspection required by § 229.21 that the sanitation compartment of the lead locomotive in use is not adequately ventilated as required by paragraph (a)(1) of this section, the railroad shall repair the ventilation prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer service as set forth in paragraph (b)(1)(iii) of this section.

(h) *Door closure and modesty lock.* If the railroad determines during the daily inspection required by § 229.21 that the sanitation compartment on the lead locomotive is not equipped with a door that closes, as required by paragraph (a)(2)(i) of this section, the railroad shall repair the door prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer service as set forth in paragraph (b)(1)(iii) of this section. If the railroad determines during the daily inspection required by § 229.21 that the modesty lock required by paragraph (a)(2)(ii) of this section is

defective, the modesty lock shall be repaired pursuant to the requirements of § 229.139(e).

(i) *Equipped units; retention and maintenance.* Except where a railroad downgrades a locomotive to service in which it will never be occupied, where a locomotive is equipped with a toilet facility as of [the effective date of the final rule], the railroad shall retain and maintain the toilet facility in the locomotive consistent with the requirements of this part, including locomotives used in switching service pursuant to paragraph (b)(1)(ii) of this section, and in transfer service pursuant to paragraph (b)(1)(iii) of this section.

(j) *Newly manufactured units; in-cab facilities.* All locomotives manufactured after June 3, 2002, except switching units built exclusively for switching service and locomotives built exclusively for commuter service, shall be equipped with a sanitation compartment accessible to cab employees without exiting to the out-of-doors for use. No railroad may use a locomotive built after June 3, 2002, that does not comply with this subsection.

(k) *Potable water.* The railroad shall utilize potable water where the washing system includes the use of water.

[67 16050, Apr. 4, 2002, as amended at 71 FR 61857, Oct. 19, 2006]

§ 229.139 Sanitation, servicing requirements.

(a) The sanitation compartment of each lead locomotive in use shall be sanitary.

(b) All components required by § 229.137(a) for the lead locomotive in use shall be present consistent with the requirements of this part, and shall operate as intended such that:

(1) All mechanical systems shall function;

(2) Water shall be present in sufficient quantity to permit flushing;

(3) For those systems that utilize chemicals for treatment, the chemical (chlorine or other comparable oxidizing agent) used to treat waste must be present; and

(4) No blockage is present that prevents waste from evacuating the bowl.

(c) The sanitation compartment of each occupied locomotive used in switching service pursuant to